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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/314,738	05/19/1999	SHOLOM S. ROSEN	0225-4185	5587
7590	01/26/2004		EXAMINER	
MORGAN & FINNEGAN LLP 345 PARK AVENUE NEW YORK, NY 10154			BARRON JR, GILBERTO	
			ART UNIT	PAPER NUMBER
			2132	20
DATE MAILED: 01/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Requirement for 37 CFR 1.608(b) Statement

On May 19, 1999, applicant filed the instant application with an accompanying request under 37 CFR 1.607 for Interference with a patent. The examiner has determined that applicant's filing sets forth that "substantially the same subject matter" requirement of 35 U.S.C. 135(b) has been met. In accordance with the Board decision of July 7, 2003, the submission of copied claims establishes the written description requirement of 35 USC 112, 1st paragraph for the instant application. However, the priority benefit of applicant's earlier filed parent applications, under 37 CFR 1.120 is not granted at this time because the question of whether the disclosure of the ancestral applications meet the written description requirement of 35 USC 112, 1st paragraph was not addressed by the Board Decision and it is the examiner's position, as exemplified in the Examiner's Answer (mailing date December 2, 2002), that the specifications of the parent applications would not provide sufficient disclosure to meet the written description requirement of 35 USC 112, 1st paragraph for the copied claims.

Since the filing date for the instant application is May 19, 1999, which is one year from the date of issue of the Hiroya et al. patent, under 37 CFR 1.608(b), Applicant is required to file evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is *prima facie* entitled to a judgment relative to the patentee and an explanation stating with particularity the basis upon which the applicant is *prima facie* entitled to the judgment. Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible,

and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would prima facie entitle the applicant to judgment on priority with respect to the effective filing date of the patent.

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gilberto Barrón Jr. whose telephone number is 703-305-1830. The examiner can normally be reached on weekdays, Monday through Friday from 9 to 4.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 305-3900.


Gilberto Barrón Jr.
SPE Art Unit 2132